

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 792 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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VASUDEV CHELAJI MARVADI - Appellant(s)

Versus

JYOTINDRA PURSOTTAMDAS PATEL & 1 - Opponent(s)

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Appearance :

MR.SUNIL MEHTA, FOR MR.S.K.BUKHARI for Appellant,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponents,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 25/01/2007

ORAL JUDGMENT

Mr.Sunil Mehta, learned Advocate appearing on
behalf of Mr.Bukhari has tendered one letter dated

15th January, 2007 sent to the appellant-accused, Vasudev Chelaji Marvadi by registered Post A.D., referred to by the Court in earlier order dated 22nd January, 2007. Considering the contents of the letter tendered today alongwith the window receipt dated 16th January, 2007, vis-a-vis the earlier orders passed by this Court on 7th December, 2006, 9th January, 2007 and 15th January, 2007, the Court is of the view that the appellant ought to have arranged for his appearance or at least could have appeared in person today as intimated vide above said letter of 15th January, 2007. It is clear from the conduct of the appellant-accused that neither he is interested in instructing the lawyer nor in making arrangement for his appearance vice Mr.Bukhari.

2. It is also submitted by learned A.P.P., Ms.Pandit that as the matter is very old, the Court should not adjourn the matter only on account of non-cooperation on the part of the appellant-accused. The original record and proceedings are before the Court. In the same way, the entire

paper-book is also with the Court and she is also ready to assist the Court in dealing with the matter on merit. This being the Criminal Appeal cannot be disposed of by dismissing it the same for want of prosecution. The Court has good reason for accepting this submission, therefore the Court is inclined to decide the matter on merits. Ultimately, the illegality and validity of the order of conviction has been challenged by the appellant-accused, need to be examined.

3. The appeal is preferred under Section 374 of the Code of Criminal Procedure against the order of conviction and sentence passed by the learned Special Judge, Ahmedabad City dealing with the cases under authority to deal with the cases instituted for the offences punishable under the Essential Commodities Act. The learned Special Judge while disposing of the Special Case No.18 of 1990 found that the prosecution is successful in proving the charges levelled against the appellant-accused and therefore held that the accused is liable to be punished under Section 7 of the Essential

Commodities Act.

4. Ms.Pandit has taken this Court through the record and proceedings. She has also taken through the entire set of oral as well as documentary evidence. I have also considered the various grounds assailing the validity and legality of the judgment under challenge. To appreciate the say of the appellant as well as, learned A.P.P., firstly it would be necessary to state the case of the prosecution in brief.

5. It is alleged that accused had violated the provisions of Gujarat Essential Articles (Licensing, Control Stock Declaration) Order 1981 framed under Section 3 of the Essential Commodities Act and he had also violated the various conditions of licence mainly Condition Nos.5, 7, 8, 9, 4 (1) and 11 of the Licence. It is the say of the prosecution that the accused was holding licence to distribute the kerosene on retail basis from Shop No.2061 belonging to Chinubhai Tilakchand Shah situated at Dhanushdhari Society, Saijpur Bogha, Tal. & City

Ahmedabad. This shop was raided by the responsible Officer of Civil Supply Department through Director of Inquiries, Civil Supply Department, Gandhinagar and during the surprise checking of the shop and during inquiry the authority had found serious irregularities. According to the prosecution, the appellant had purchased 400 litters of kerosene from Raju Consumer Cooperative Society Limited, Kubernagar, Ahmedabad on 7th October, 1988 vide bill No.162. However, the accused had taken on credit only 200 litters of kerosene out of the stock of 400 litters of kerosene purchased by him. In the Stock Register, the appellant did not make entry of 200 litters of kerosene. The appellant had also not produced necessary documents to show sale of 200 litters of kerosene to the bona-fide customers and therefore according to the prosecution the accused was liable for disposal of 200 litters of kerosene in an illegal manner. This aspect was admitted by the accused before the Inquiry Officer, is the back bone of the case of the prosecution. It is also admitted by the accused during inquiry that he had charged Rs.2.50 Paise per litter. As per the Stock

Register the appellant has sold in all 200 litters of kerosene on 13/10/1988, 14/10/1988, 17/10/1988 and on 18/10/1988 respectively. However, he had not prepared any bill for all these sales and had not even cared to send Yadi to the concerned Office. On the date of inquiry, that is on 19/10/1988, it was found that the appellant had sold 130 litters of kerosene without issuing bills. He was also found for not putting up price list outside the shop as required under the Law as well as under one of the conditions of the licence. Obviously, there are allegations against the accused that the bill-books were not in order, address of the customers were also not written and as the bill-books were not containing the names and addresses of customers, so also, the address of the shop and licence number, the accused should be held responsible for gross violation of the mandatory conditions of the licence. The appellant-accused had also not cared to send the stock register to the competent authority for the month of September, 1988. The bills produced from Sr.No.145 to 176 were showing the sale of 152 litters of kerosene but the said

bills were also not containing the names and addresses of the customers. It is further the say of the prosecution that the accused had disposed of 153 litters of kerosene by issuing false bills.

6. The learned trial Judge has considered various aspects including the report of the Inquiry Officer, who had made the surprise checking at the shop of the accused and has rightly considered certain undisputed facts. The licence is also available on record and the prosecution has satisfactorily established that on 7/10/1988, 400 litters of kerosene was supplied to the accused and the same was not reflected in the stock register otherwise, the entire stock ought to have been reflected by one single entry or consecutive entries immediately on receipt of stock from Raju Consumer Cooperative Society. When the entry of 200 litters of kerosene is shown in the stock register as stock purchased on 7/10/1988, it is sufficient to establish one fact that entry was made in the stock register only with a view to see that he can dispose of the remaining 200 litters of kerosene illegally.

So, the intention has been gathered from the method in which the accused was maintaining the Registers including the stock register and bill-books etc.

7. In some cases, the Court has found on the strength of the oral as well as documentary evidence that the accused had charged 20 Paise more per litter in selling price of the kerosene. This aspect has been disclosed while dealing with point No.2 in paragraph No.11 of the judgment. Of course, one of the prosecution witnesses is examined viz. Ambalal Vyas, occupying Shop No.1464 has not supported the case of the prosecution and therefore the learned Judge has rightly held that, it will not be safe to conclude that the accused had changed the place of his business. However, by elaborate discussion on oral as well as documentary evidence especially the bill books produced before the trial Court the learned Judge has held that for large stock of kerosene the accused has not prepared bills and in most of the bills he had not mentioned the addresses of the consumer who had purchased kerosene from him. It is the intention of the Licensing Authority that

a licence holder shall mention each details in the bill so that during cross checking the genuineness of the sale can be ascertained. Unless the address of the consumer is mentioned in the bill, it would not be possible for the Checking Authorities or any other Government Machinery otherwise authorized to regulate the sale and distribution of the essential commodity like kerosene, to ascertain the genuineness of such sales. The learned Judge has accepted the version of the Inquiry Officer because the same is supported by documentary evidence such as presence of incomplete bill-books and absence of relevant bills which were required to be produced by the accused at the time of surprise checking. It is not the defence of the accused that he had sought some time so that he can prove all these documents to the Checking Authority, otherwise such suggestion could have been made to the Officer who was examined during the course of trial. There is sufficient evidence oral as well as documentary that on 7/10/1988 400 litters of kerosene was supplied to the accused by Raju Consumer Society otherwise the office bearers or the responsible person of Raju

Consumer Society would have been prosecuted for showing wrong entry of sale of 400 litters of kerosene to the accused. When the accused has failed in showing and satisfying the Court that actually he had purchased 200 litters and there is no substance in the allegation of the prosecution that he had drawn stock of 400 litters of kerosene on 7/10/1988 then, he could be held responsible and the learned trial Judge therefore has held him responsible for illegal disposal of 200 litters of kerosene directly as if the same was not even received by him from the said consumer society. For short, the learned trial Judge has appreciated oral as well as documentary evidence in correct perspective. The conviction is not based only on confessional statement made by the accused. On the contrary, the learned Judge has accepted it very cautiously and has attempted to ascertain the truth of the facts stated in confessional portion of the statement of the appellant-accused recorded by the Checking Officer. It is settled proposition of law that such a statement of accused is admissible and can be read in evidence. It would not be safe to

base the conviction on such statements only but where there is some corroborative pieces of evidence which is capable of provide strength to the say of the prosecution and to the admission made by the accused in his statement then, the conviction can be based on such evidence and such an order of conviction is not required to be disturbed on unconvincing ground that have been placed before the Court. It appears that practically there was no defence for the accused and therefore only hypothetical question have been placed before the witnesses and certain suggestions were made contrary to the documentary evidence and so the learned Judge has rightly not accepted the defence plea of mere allegation that the appellant-accused has been implicated falsely because the accused is supposed to satisfy the Court that the case of the prosecution is not acceptable or his defence, qua the allegation made by the prosecution is a probable defence. In absence of such a situation, the Court is inclined to dismiss the present appeal and therefore the same is dismissed and say of learned A.P.P., placed before the Court is accepted.

8. In the result, present Criminal Appeal is hereby dismissed. The judgment and order dated 25th June, 1993 rendered by the learned Special Judge, Court No.4, Ahmedabad City in Special Case No.18 of 1990 is hereby confirmed.

8.1 Bail bond of the accused-appellant shall stand cancelled. As the appellant-accused is enjoying the bail till today, he is directed to appear / surrender before the concerned trial Court within 04 (four) weeks from today, failing which the concerned trial Judge shall issue non-bailable warrant against the appellant-accused and he shall be sent to the jail to serve the sentence imposed. Order and Direction accordingly.

(C.K.BUCH, J.)

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